McLaughlin & Stern, LLP

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Daniel J. Horwitz
Partner
dhorwitz@mclaughlinstern.com
(212) 455-0448

260 Madison Avenue
New York, New York 10016
(212) 448–1100
FAX (212) 448-0066
www.mclaughlinstern.com

Garden City, New York
Millbrook, New York
Westport, Connecticut
West Palm Beach, Florida
Naples, Florida

December 3, 2021

The Honorable Vera M. Scanlon
United States District Court for the Eastern District of New York
225 Cadman Plaza East
Brooklyn, New York 11201

RE: *Securities and Exchange Commission v. GPB Capital Holdings, LLC et al.*, (21-cv-00583-MKB-VMS)

Dear Judge Scanlon:

Further to the hearing the Court conducted on December 1, 2021 in the above-captioned matter, we write to supplement the arguments we made in our letters dated September 8, 2021 and September 21, 2021 as to why authority exists for the Court to grant our request for mediation.

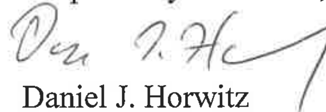
First and foremost, as a party and an owner of GPB Capital Holdings, LLC, Mr. Gentile has a right to participate in a court-ordered process over issues concerning the Company he owns. Second, to read Mr. Gentile out of the Amended Monitor Order, deprives him of the process to which he is entitled when the Commission sought and obtained limitations on his rights and property. As the Second Circuit has repeatedly recognized, "the SEC's burden of proof rises in relation to the hardship the [restraint] would create for defendants." SEC v. Gonzalez de Castilla, 146 F. Supp.2d 402, 415 (S.D.N.Y. 2001 (J. Sweet) *citing* SEC v. Unifund SAL, 910 F.2d 1028 (2d Cir. 1990). In other words, there is a sliding scale for a showing by the SEC depending on the nature of the restraint the SEC is seeking; here Mr. Gentile was not a participant in the motion practice regarding the appointment of the Monitor over Mr. Gentile's assets and rights. There are two ways to view that – either he was deprived of due process or the Amended Monitor Order does in fact provide him with process through the Court-supervised mediation of disputes related to the Monitor. Accordingly, we submit that the Amended Monitor Order provides that Mr. Gentile may avail himself of the mediation dispute resolution process in Paragraph 4.

Another point that merits discussion is the Monitor's assertion that there is nothing to mediate because he has made no decisions and taken no action regarding Mr. Gentile. That response begs the question of what the Monitor is doing given that the Company has made numerous decisions about Mr. Gentile's request for books and records, distributions, attorney's

fees, the payment of loan principal and interest, a tax distribution and the bankruptcy filing of one the portfolio companies owned by GPB Capital, of which Mr. Gentile is the sole owner. Indeed, his *raison d'etre* is to ensure that Mr. Gentile stays out the management of the Company. The point here is that there are plenty of issues involving the Monitor that merit mediation.

Finally, it is telling that neither the Company, the Monitor or the Commission answered the question of what is wrong with mediating the dispute. Given that they are supposed to have the shareholder's best interest in mind, it is hard to fathom why they prefer the more complicated and time-consuming route of litigation over the demonstrably more efficient and cost-effective mediation process they themselves proposed to the Court when the SEC applied for and the Company consented to the Monitor Order. With that said, Mr. Gentile has been denied process by the monitor and GPB and is suffering financial harm as a result of that denial. The Amended Monitor Order contemplates confidential mediation to resolve the sort of issues the Mr. Gentile is now raising. If confidential mediation is not available to him through this court he will seek full resolution of his issues in Delaware Chancery Court — as GPB has averred - on an expedited basis.

Respectfully submitted,



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